

AMENDED IN ASSEMBLY MAY 27, 2004

AMENDED IN SENATE APRIL 27, 2004

AMENDED IN SENATE MARCH 24, 2004

AMENDED IN SENATE MARCH 15, 2004

**SENATE BILL**

**No. 1090**

**Introduced by Senator Dunn**

January 8, 2004

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An act to amend Section 798.71 of the Civil Code, and to amend Sections ~~18060.5, 18062.2, and 18063 of~~ 18024, 18060.5, 18062.2, and 18063 of, and to add Section 18061.6 to, the Health and Safety Code, relating to manufactured homes and mobilehomes.

LEGISLATIVE COUNSEL'S DIGEST

SB 1090, as amended, Dunn. Manufactured homes and mobilehomes.

(1) Under the existing Mobilehome Residency Law, the management may not prohibit the listing nor the sale of a manufactured home or mobilehome within the park by the homeowner, an heir, joint tenant, or personal representative of the estate who gains ownership of a mobilehome in the mobilehome park through the death of the owner of the mobilehome who was a homeowner at the time of his or her death, or the agent of any such person other than the management, nor require the selling homeowner, or an heir, joint tenant, or personal representative of the estate who gains ownership of a mobilehome in the mobilehome park through the death of the owner of the mobilehome who was a homeowner at the time of his or her death, to authorize the management to act as the agent in the sale of a manufactured home or

mobilehome as a condition of management's approval of the buyer or prospective homeowner for residency in the park.

This bill would additionally provide that the management may not require the selling homeowner or an heir, joint tenant, or personal representative of the estate who gains ownership of a mobilehome in the mobilehome park through the death of the owner of the mobilehome who was a homeowner at the time of his or her death, to authorize any other specified broker, dealer, or person to act as the agent in the sale of a manufactured home or mobilehome as a condition of management's approval of the buyer or prospective homeowner for residency in the park. The bill would also make technical changes in those provisions.

(2) The existing Mobilehomes-Manufactured Housing Act of 1980 prescribes conduct that is an unlawful business practice with respect to the sale of manufactured homes and mobilehomes, makes it unlawful for a dealer or salesperson to engage in specified conduct, and makes it a misdemeanor to engage in those practices or that conduct.

This bill would revise a provision that makes it an unlawful business practice to participate in the sale of a manufactured home, mobilehome, or commercial coach without making the return and payment of sales tax due.

The bill would additionally make it an unlawful business practice to fail, at the time that the seller accepts a buyer's offer for a manufactured home or mobilehome that is not a new manufactured home or mobilehome, to execute a document or provision within an existing document signed by both the dealer and seller that discloses the exact amount of the buyer's offer and the specific amounts of any commission and each and every other payment being made to the dealer or any employee or agent of the dealer, and by the dealer, from sale proceeds to any other person. The bill would require the dealer to submit a copy of that disclosure into escrow and maintain, at the dealer's place of business, a copy of that disclosure for 3 years from the date of sale.

The bill would make it unlawful for a dealer, or a salesperson who is also an owner or manager or an agent of the owner or manager of a mobilehome park, to *knowingly* violate specified provisions of the Mobilehome Residency Law relating to the sale or transfer of mobilehomes.

The bill would revise terminology in the provisions relating to conduct by a dealer in the sale or advertising of a manufactured home,



mobilehome, or commercial coach generally from “commercial coach” to “commercial modular.”

(3) *Existing law prohibits advertising or representing a manufactured home, mobilehome, or commercial coach as new if it was a model unless that fact is advertised.*

*This bill would, alternatively, authorize that information to be provided by posting it and including a notice in a purchase agreement.*

(4) *Existing law requires the Department of Housing and Community Development to adopt specified regulations relative to issuance of citations.*

*This bill would, instead, authorize the department to adopt those regulations.* The bill would specify the extent to which regulations of the department to implement and interpret provisions of the bill are ~~editorial changes for purposes of~~ subject to the Administrative Procedure Act.

Because violations of various provisions of the bill would create new crimes, the bill would create a state-mandated local program.

~~(4)~~

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 798.71 of the Civil Code is amended to  
2 read:

3 798.71. (a) (1) The management may not show or list for  
4 sale a manufactured home or mobilehome without first obtaining  
5 the owner’s written authorization. The authorization shall specify  
6 the terms and conditions regarding the showing or listing.

7 (2) Management may require that a homeowner advise  
8 management in writing that his or her manufactured home or  
9 mobilehome is for sale. If management requires that a homeowner  
10 advise management in writing that his or her manufactured home

1 or mobilehome is for sale, failure to comply with this requirement  
2 does not invalidate a transfer.

3 (b) The management shall prohibit neither the listing nor the  
4 sale of a manufactured home or mobilehome within the park by the  
5 homeowner, an heir, joint tenant, or personal representative of the  
6 estate who gains ownership of a manufactured home or  
7 mobilehome in the mobilehome park through the death of the  
8 owner of the manufactured home or mobilehome who was a  
9 homeowner at the time of his or her death, or the agent of any such  
10 person other than the management.

11 (c) The management shall not require the selling homeowner,  
12 or an heir, joint tenant, or personal representative of the estate who  
13 gains ownership of a manufactured home or mobilehome in the  
14 mobilehome park through the death of the owner of the  
15 manufactured home or mobilehome who was a homeowner at the  
16 time of his or her death, to authorize the management or any other  
17 specified broker, dealer, or person to act as the agent in the sale of  
18 a manufactured home or mobilehome as a condition of resale of the  
19 home in the park or of management's approval of the buyer or  
20 prospective homeowner for residency in the park.

21 (d) Nothing in this section shall be construed as affecting the  
22 provisions of the Health and Safety Code governing the licensing  
23 of manufactured home or mobilehome salespersons or dealers.

24 SEC. 2. *Section 18024 of the Health and Safety Code is*  
25 *amended to read:*

26 18024. (a) If, upon inspection or investigation, based upon a  
27 complaint or otherwise, the department has cause to believe that  
28 a person is acting in the capacity, or engaging in the business, of  
29 a dealer within this state without having a license in good standing  
30 therefor, and the person is not otherwise exempt pursuant to  
31 subdivision (b) of Section 18002.6, the department may issue a  
32 citation to that person in writing, describing with particularity the  
33 basis of the citation. Each citation may contain an order of  
34 abatement and assessment of a civil penalty not to exceed two  
35 thousand dollars (\$2,000). All civil penalties collected under this  
36 section shall be deposited in the Mobilehome-Manufactured  
37 Home Revolving Fund provided for in Section 18016.5.

38 (b) The department ~~shall~~ *may* adopt regulations prescribing  
39 procedures for issuance of citations under this section and  
40 covering the assessment of a civil penalty which shall give due

1 consideration to the gravity of the violation, the good faith of the  
2 person cited, and any history of previous violations.

3 (c) The sanctions authorized under this section shall be separate  
4 from, and in addition to, all other civil or criminal remedies.

5 *SEC. 3.* Section 18060.5 of the Health and Safety Code is  
6 amended to read:

7 18060.5. With respect to business practices, it is unlawful to  
8 do any of the following:

9 (a) Knowingly purchase, sell, or otherwise acquire or dispose  
10 of a stolen manufactured home, mobilehome, or commercial  
11 ~~coach~~ modular.

12 (b) Violate any of the terms or provisions of regulations  
13 promulgated under the authority of Section 18015.

14 (c) Cause the state or any person to suffer any loss or damage  
15 by reason of any fraud or deceit practiced on them or fraudulent  
16 representations made to any person in the sale or purchase of a  
17 manufactured home, mobilehome, or commercial ~~coach~~ modular  
18 or parts or accessories thereof.

19 (d) Violate any of the terms and conditions of Chapter 3  
20 (commencing with Section 1797) of Title 1.7 of Part 4 of Division  
21 3 of the Civil Code.

22 (e) Move a manufactured home, mobilehome, or commercial  
23 ~~coach~~ modular subject to registration pursuant to this part from a  
24 mobilehome park or other site of installation to another location,  
25 without obtaining from the legal owner, written consent for the  
26 move as prescribed in Section 18099.5.

27 (f) Include as an added cost to the selling price of a  
28 manufactured home, mobilehome, or commercial ~~coach~~ modular,  
29 an amount for licensing or transfer of title of the manufactured  
30 home, mobilehome, or commercial ~~coach~~ modular, which amount  
31 is not due to the state unless, prior to the sale, the amount has been  
32 paid by a dealer to the state in order to avoid penalties that would  
33 have accrued because of late payment of those fees. However, a  
34 dealer may collect from the second purchaser of a manufactured  
35 home, mobilehome, or commercial ~~coach~~ modular, a prorated fee  
36 based upon the number of months remaining in the registration  
37 year for that manufactured home, mobilehome, or commercial  
38 ~~coach~~ modular, if the manufactured home, mobilehome, or  
39 commercial ~~coach~~ modular was previously sold by the dealer and  
40 the sale was subsequently rescinded and all the fees that were paid,

1 as required by this part and Chapter 2 (commencing with Section  
2 10751) of Division 2 of the Revenue and Taxation Code, were  
3 returned to the first purchaser of the manufactured home,  
4 mobilehome, or commercial ~~each~~ modular.

5 (g) Participate in the sale of a manufactured home,  
6 mobilehome, or commercial ~~each~~ modular reported to the  
7 department pursuant to this part without making the return and  
8 payment of any sales tax due and required by Section 6451 of the  
9 Revenue and Taxation Code.

10 (h) Fail to exercise reasonable supervision over the activities of  
11 employees who negotiate or promote the sale of manufactured  
12 homes, mobilehomes, or commercial ~~eaches~~ modulars.

13 (i) Display for sale, offer for sale, or sell, a manufactured home,  
14 mobilehome, or commercial ~~each~~ modular, representing that  
15 manufactured home, mobilehome, or commercial ~~each~~ modular  
16 to be of a year model different from the year model designated at  
17 the time of manufacture or first assembly as a completed  
18 manufactured home, mobilehome, or commercial ~~each~~ modular.

19 (j) Directly or indirectly authorize or advise another licensee to  
20 change the year model of a manufactured home, mobilehome, or  
21 commercial ~~each~~ modular in the inventory of the other licensee.

22 (k) Fail, at the time that the seller accepts a buyer's offer for a  
23 manufactured home or mobilehome that is not a new  
24 manufactured home or mobilehome, to execute a document or  
25 provision within an existing document signed by both the dealer  
26 and seller, that discloses the exact amount of the buyer's offer and  
27 the specific amounts of any commission and each and every other  
28 payment being made to the dealer or any employee or agent of the  
29 dealer, and by the dealer, from sale proceeds to any other person.  
30 *and seller that discloses (1) the exact amount of the buyer's offer*  
31 *and the specific amounts of any commission, except that this*  
32 *subdivision does not require disclosure of any payments made from*  
33 *that commission, (2) each and every other payment from the sale*  
34 *proceeds being made to the dealer or any employee or agent of the*  
35 *dealer; and (3) each and every other payment made by the dealer*  
36 *from the sale proceeds to any other person.* The dealer shall submit  
37 a copy of that disclosure into escrow and maintain, at the dealer's  
38 place of business, a copy of that disclosure for three years from the  
39 date of sale.

40 SEC. 3.—

SEC. 4. *Section 18061.6 is added to the Health and Safety Code to read:*

18061.6. (a) *Notwithstanding the prohibition in subdivision (d) of Section 18061 or any regulation to the contrary, a dealer may, alternatively, post in a prominent location immediately outside the primary entrance to a new manufactured home, mobilehome, or commercial modular a conspicuous notice that the unit was previously installed as a model, display unit, or used for other occupancy. Additionally, a similarly conspicuous and prominent notice, requiring a buyer's separate initials, shall be included in any purchase agreement for that unit.*

(b) *Notwithstanding Section 5050 of Title 25 of the California Code of Regulations, an advertisement of any new manufactured home, mobilehome, or commercial modular is not required to contain the year of manufacture of the unit provided the new unit is not more than three years old.*

SEC. 5. *Section 18062.2 of the Health and Safety Code is amended to read:*

18062.2. *It is also unlawful for a dealer to do any of the following:*

(a) *Engage in the business for which the dealer is licensed without at all times maintaining an established place of business.*

(b) *Employ any person as a salesperson who is not licensed pursuant to this part, or whose license or 90-day certificate is not displayed on the premises of the dealer as provided in Section 18063.*

(c) *Permit the use of the dealer's license, supplies, or books by any other person for the purpose of permitting that person to engage in the sale of manufactured homes, mobilehomes, or commercial modulars, or to permit the use of the dealer's license, supplies, or books to operate a secondary location to be used by any other person, if the licensee has no financial or equitable interest or investment in the manufactured homes, mobilehomes, or commercial modulars sold by, or the business of, or secondary location used by, the person, or has no such interest or investment other than commissions, compensations, fees, or any other thing of value received for the use of the dealer's license, supplies, or books to engage in the sale of manufactured homes, mobilehomes, or commercial modulars.*

1 (d) Advertise any specific manufactured home, mobilehome,  
2 or commercial modular for sale without identifying the  
3 manufactured home, mobilehome, or commercial modular by its  
4 serial number or by the number on its federal label or insignia of  
5 approval issued by the department.

6 (e) Advertise the total price of a manufactured home,  
7 mobilehome, or commercial modular without including all costs  
8 to the purchaser at the time of delivery at the dealer's premises,  
9 except sales tax, title and registration fees, finance charges, and  
10 any dealer documentary preparation charge. The dealer  
11 documentary preparation charge shall not exceed twenty dollars  
12 (\$20).

13 (f) Exclude from the advertisement of a manufactured home,  
14 mobilehome, or commercial modular for sale information to the  
15 effect that there will be added to the advertised total price at the  
16 time of sale, charges for sales tax, title and registration fees, escrow  
17 fees, and any dealer documentary preparation charge.

18 (g) Represent the dealer documentary preparation charge as a  
19 governmental fee.

20 (h) Refuse to sell the manufactured home, mobilehome, or  
21 commercial modular to any person at the advertised total price for  
22 that manufactured home, mobilehome, or commercial modular,  
23 exclusive of sales tax, title fee, finance charges, and dealer  
24 documentary preparation charge, which charge shall not exceed  
25 twenty dollars (\$20), while it remains unsold, unless the  
26 advertisement states the advertised total price is good only for a  
27 specified time and that time has elapsed.

28 (i) Not post the salesperson's license in a place conspicuous to  
29 the public on the premises where they are actually engaged in the  
30 selling of manufactured homes, mobilehomes, and commercial  
31 modulars for the employing dealer. The license shall be displayed  
32 continuously during their employment. If a salesperson's  
33 employment is terminated, the dealer shall return the license to the  
34 salesperson.

35 (j) Offer for sale, rent, or lease within this state a new  
36 manufactured home, mobilehome, or commercial modular whose  
37 manufacturer is not licensed under this part.

38 (k) To violate Section 798.71 or 798.74 of the Civil Code, or  
39 both.

(l) When the dealer is an owner or manager, or an agent of the owner or manager, of a mobilehome park and serves as the dealer for a manufactured home or mobilehome to be installed or sold in the park, to *knowingly* violate Section 798.72, 798.73, 798.73.5, 798.75.5, or 798.83 of the Civil Code.

~~SEC. 4.—~~

SEC. 6. Section 18063 of the Health and Safety Code is amended to read:

18063. It is unlawful for a salesperson to do any of the following:

(a) At the time of employment, not deliver to his or her employing dealer his or her salesperson's license or 90-day certificate.

(b) Fail to report in writing to the department every change of residence within five days of the change.

(c) Act or attempt to act as a salesperson while not employed by a dealer. For purposes of this subdivision, "employment by a dealer" means employment reported to the department pursuant to subdivision (c) of Section 18060.

(d) To violate Section 798.71 or 798.74 of the Civil Code, or both.

(e) When the salesperson is an owner or manager, or an agent of the owner or manager, of a mobilehome park and serves as the salesperson for a manufactured home or mobilehome to be installed or sold in the park, to *knowingly* violate Section 798.72, 798.73, 798.73.5, 798.75.5, or 798.83 of the Civil Code.

~~SEC. 5.—~~

SEC. 7. Any regulations adopted by the Department of Housing and Community Development in Title 25 of the California Code of Regulations to implement and interpret the amendments in Sections 2 to 6, inclusive, of this act shall be ~~deemed editorial changes pursuant to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), if they are~~ *deemed to not materially alter any requirement, right, responsibility, condition, prescription, or other regulatory element as provided in Section 100 of Title 1 of the California Code of Regulations if the regulations consist of amendments, repeals, or adoptions that are substantially the same in content as the provisions of Sections 2 to 6, inclusive, of this act.*

1     ~~SEC. 6.~~—

2     *SEC. 8.* No reimbursement is required by this act pursuant to  
3 Section 6 of Article XIII B of the California Constitution because  
4 the only costs that may be incurred by a local agency or school  
5 district will be incurred because this act creates a new crime or  
6 infraction, eliminates a crime or infraction, or changes the penalty  
7 for a crime or infraction, within the meaning of Section 17556 of  
8 the Government Code, or changes the definition of a crime within  
9 the meaning of Section 6 of Article XIII B of the California  
10 Constitution.

